

RECEIVED
CENTRAL FAX CENTER

JUL 20 2007

REMARKS

In the non-final office action mailed April 20, 2007, claims 1-20, 50, 52-58 and 91-116, 130-137 were pending and indicated to be rejected in the Office Action Summary. Claims 19, 53-56, 105, 120 and 130 have been withdrawn as being directed to a non-elected species. Reconsideration of the present application including claims 1-20, 50, 52-58, 91-116, and 120-137 is respectfully requested.

Claims 1-4, 6, 91-93, 95 and 121-124 were rejected under 35 USC §102(e) as being anticipated by U.S. Patent No. 7,083,621 to Shaolian et al. Claim 1 recites, in combination with other features, "at least one anchor extension mountable to the anchor and extending along a longitudinal axis ... said at least one anchor extension including a first member and a second member, said second member being mountable to said anchor, and said first member and said second member being structured and configured to be axially movable relative to one another to contact said connecting element with said first member and move said anchor and said connecting element toward one another while said second member is mounted to said anchor." Shaolian et al. disclose an anchor extension that includes outer adapter 152 mounted to the anchor and handle 410 pivotally mounted to the proximal end of outer adapter 152. Access needle 450 is secured to handle 410 before access needle 450 is inserted in the body so that handle 410 can be rotated about its proximal connection with outer adapter 152 to move access needle 450 toward the anchor. See col. 18, lines 35-64. Since handle 410 rotates relative to outer adapter 152 about a pivot axis, there is no disclosure the handle 410 and outer adapter 152 are structured and configured to be axially movable relative to one another to contact access needle 450 with handle 410 and move access needle 450 and anchor toward one another. Accordingly, Shaolian et al. do not disclose claim 1 and therefore withdrawal of this basis of the rejection is respectfully requested.

Claims 2-4 and 6 depending from claim 1 and rejected by Shaolian et al. are allowable at least for the reasons claim 1 is allowable. Withdrawal of this basis of the rejection of claims 2-4 and 6 depending from claim 1 is respectfully requested.

Claim 91 recites, in combination with other features, "at least one anchor extension extending along a longitudinal axis and mountable with an anchor secured to a vertebra, wherein

Response to Non-Final Office Action
Serial No. 10/769,569
Atty. Docket No. MSDI-219/PC902.00
Page 16 of 18

said inserter is movably mountable to said at least one anchor extension to move said connecting element along an insertion axis to a position adjacent said anchor, wherein said at least one anchor extension includes a first member and a second member each extending along said longitudinal axis, said second member being mountable to said anchor and said first member and said second member being movable relative to one another along said longitudinal axis to contact said connecting element with said first member and move said anchor and said connecting element toward one another in a direction transverse to said insertion axis." As discussed above with respect to claim 1, there is no disclosure in Shaolian et al. that handle 410 is axially movable to outer adapter 152. Furthermore, handle 410 is rotated about a pivot axis at its connection with the proximal end of outer adapter 152 to move access needle 450 along an insertion axis. However, there is no disclosure that handle 410 is movable along the longitudinal axis of outer adapter 152 to move access needle 450 in a direction that is transverse to the insertion axis. Accordingly, Shaolian et al. do not anticipate claim 91 and withdrawal of this basis of the rejection thereof is respectfully requested.

Claims 92, 93 and 105 depending from claim 91 are allowable at least for the reasons claim 91 is allowable. Withdrawal of this basis for rejecting claims 92, 93 and 105 depending from claim 91 is respectfully requested.

Claims 121-124 depend from claim 106, and claim 106 has not been rejected by Shaolian et al. Accordingly, a prima facie case for rejecting claims 121-124 has not been established since the claim from which each depends has not been rejected over Shaolian et al. Withdrawal of this basis of the rejection of claims 121-124 is respectfully requested.

In the conclusion on page 3 of the Office Action, the examiner requests that the Applicant "check the claims in the instant application against the patented claims and ensure that there are no conflicting claims to avoid double patenting rejections" and that "Non-application of prior art to indicates allowable subject matter once Applicants' state how the claims patentably distinguish over the claims in US 7,011,660 and 6,530,929." Provided herewith is "Attachment A" which lists each of the pending independent claims in the present application. Each of the independent claims is marked up to indicate in italics features recited in the independent claims that are not expressly recited in the claims of either the '929 patent or the '660 patent. Only the

Response to Non-Final Office Action
Serial No. 10/769,569
Atty. Docket No. MSDI-219/PC902.00
Page 17 of 18

independent claims have been marked up since the dependent claims include the features recited in the independent claims, and therefore also include these same features that are not expressly recited in the claims of either of the '929 patent or the '660 patent. Accordingly, it is believed that the claims in the present application do not conflict with the claims in either the '929 patent or the '660 patent.

In view of the foregoing, it is believed that claims 1-20, 50, 52-58, 91-116 and 120-137 are in condition for allowance. Reconsideration of the present application is respectfully requested. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with regard to the present application.

Respectfully submitted,

By: Douglas A. Collier

Douglas A. Collier
Reg. No. 43,556
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204-2079
(317) 238-6333 (voice)

Response to Non-Final Office Action
Serial No. 10/769,569
Atty. Docket No. MSDI-219/PC902.00
Page 18 of 18

FOR ILLUSTRATION PURPOSES ONLY - DO NOT ENTER

RECEIVED
CENTRAL FAX CENTER

JUL 20 2007

ATTACHMENT A

**MARKED UP VERSION OF INDEPENDENT CLAIMS UNDERLINING CERTAIN
FEATURES NOT EXPRESSLY RECITED IN THE CLAIMS OF
U.S. PATENT NO. 6,530,929 and U.S. PATENT NO. 7,011,660**

1. (Previously presented) An instrument system for reducing displacement between adjacent bony structures, comprising:

an inserter engageable to a connecting element to percutaneously position the connecting element adjacent an anchor securable to at least one of the adjacent bony structures; and

at least one anchor extension mountable to the anchor and extending along a longitudinal axis, wherein said anchor is manipulatable percutaneously with said at least one anchor extension to position said anchor for engagement with said connecting element, said at least one anchor extension including a first member and a second member, said second member being mountable to said anchor, *and said first member and said second member being structured and configured to be axially movable relative to one another to contact said connecting element with said first member and move said anchor and said connecting element toward one another while said second member is mounted to said anchor.*

50. (Previously presented) An instrument system for stabilizing adjacent vertebrae, comprising:

an inserter engageable to a connecting element; and

at least one anchor extension mountable with an anchor secured to a vertebra, wherein said inserter is movably mountable to said at least one anchor extension to move said connecting element along an insertion axis to a position adjacent said anchor, wherein said at least one anchor extension includes a first body and a second body coupled to said anchor, *said first and second bodies forming a passage therebetween adapted to receive said connecting element therethrough along the insertion axis at a location spaced proximally from a proximal end of said anchor*, wherein said anchor extension extends along a longitudinal axis and includes a first elongated sleeve and a second elongated sleeve, *said first and second bodies being coupled to said second sleeve*

ATTACHMENT A to Response to 4/20/2007 Office Action
USSN10/769,569
Page 1 of 4

FOR ILLUSTRATION PURPOSES ONLY – DO NOT ENTER

and said first sleeve extends about said second sleeve and is axially movable along said second sleeve with said first and second bodies located distally of said first sleeve and said passage being formed between said proximal end of said anchor and said first sleeve.

91. (Previously presented) An instrument system for reducing displacement between adjacent vertebrae, comprising:

an inserter engageable to a connecting element; and

at least one anchor extension extending along a longitudinal axis and mountable with an anchor secured to a vertebra, wherein said inserter is movably mountable to said at least one anchor extension to move said connecting element along an insertion axis to a position adjacent said anchor, wherein said at least one anchor extension includes a first member and a second member each extending along said longitudinal axis, said second member being mountable to said anchor and *said first member and said second member being movable relative to one another along said longitudinal axis to contact said connecting element with said first member and move said anchor and said connecting element toward one another in a direction transverse to said insertion axis.*

106. (Previously presented) An instrument system for reducing displacement between adjacent bony structures, comprising:

an inserter engageable to a connecting element to percutaneously position the connecting element adjacent an anchor securable to at least one of the adjacent bony structures; and

at least one anchor extension mountable to the anchor, wherein said anchor is manipulatable percutaneously with said at least one anchor extension to position said anchor for engagement with said connecting element, said at least one anchor extension including a first member and a second member, said second member including a pair of jaws mountable to said anchor with said anchor between said pair of jaws, and *said first member and said second member being movable relative to one another to contact said connecting element with said first member and move said anchor and said connecting element toward one another, wherein each of said jaws includes a protrusion extending*

ATTACHMENT A to Response to 4/20/2007 Office Action

USSN10/769,569

Page 2 of 4

FOR ILLUSTRATION PURPOSES ONLY – DO NOT ENTER

therefrom toward the other of said pair jaws, said protrusions being received in aligned receptacles of said anchor when said second member is mounted thereto.

125. (Previously presented) An instrument system for reducing displacement between adjacent vertebrae, comprising:

- an inserter engageable to a connecting element; and
- at least one anchor extension mountable with an anchor secured to a vertebra, wherein said inserter is movably mountable to said at least one anchor extension to move said connecting element along an insertion axis to a position adjacent said anchor, wherein said at least one anchor extension includes a first member and a second member, said second member being mountable to said anchor and *said first member and said second member being movable relative to one another to contact said connecting element with said first member and move said anchor and said connecting element toward one another in a direction transverse to said insertion axis*, wherein:
 - said first member is an outer sleeve with a passage and said second member is movably mounted in said passage of said first member and said first member is engaged with said second member to manipulate a distal portion of said second member between an open configuration to receive the anchor and a mounting configuration to mount the anchor thereto as said second member is displaced proximally relative said first member; and
 - said anchor extension includes a locking mechanism to releasably secure said first and second members in position relative to one another, *said locking mechanism including a lock button pivotally mounted to said first member, said lock button being movable to a first orientation relative to said first member and into engagement with said second member to provide an indication that said second member is in said mounting configuration, and said lock button further being movable out of said first orientation as said second member is proximally displaced relative to said first member.*

ATTACHMENT A to Response to 4/20/2007 Office Action
USSN10/769,569
Page 3 of 4

FOR ILLUSTRATION PURPOSES ONLY - DO NOT ENTER

RECEIVED
CENTRAL FAX CENTER

JUL 20 2007

135. (Previously presented) An instrument system for stabilizing adjacent vertebrae, comprising:

an inserter engageable to a connecting element; and
at least one anchor extension mountable with an anchor secured to a vertebra, wherein said inserter is operable to move said connecting element to a position adjacent said anchor, wherein said at least one anchor extension includes a first body and a second body coupled to said anchor, *said first and second bodies forming a passage therebetween adapted to receive said connecting element therethrough at a location spaced proximally from a proximal end of said anchor*, wherein said anchor extension extends along a longitudinal axis and includes a first elongated sleeve and a second elongated sleeve, said first and second bodies being coupled to said second sleeve and *said first sleeve extends about said second sleeve and is axially movable along said second sleeve with said first and second bodies located distally of said first sleeve and said passage being formed between said proximal end of said anchor and said first sleeve.*

136. (Previously presented) An instrument system for reducing displacement between adjacent bony structures, comprising:

at least one anchor configured to engage a bony structure;
an elongated connecting element engageable to said at least one anchor when said connecting element is positioned along the bony structure; and
at least one anchor extension mounted to said at least one anchor, wherein said at least one anchor extension extends along a longitudinal axis and said anchor is structured for percutaneous manipulation with said at least one anchor extension to position said at least one anchor for engagement with said elongated connecting element, said at least one anchor extension including a first member and a second member, said second member being mountable to said at least one anchor, and *said first member and said second member being structured and configured to be axially movable relative to one another to contact said connecting element with said first member and move said at least one anchor and said connecting element toward one another while said second member is mounted to said at least one anchor.*

ATTACHMENT A to Response to 4/20/2007 Office Action
USSN10/769,569
Page 4 of 4